86-682 (1)

Supreme Court, U.S.
FILED
OCT 25 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1986

* * * * * * * * * * * * * * * * * * * *

EDWARD C. PERKINS,

Petitioner

vs.

STATE OF ALABAMA,

Respondent

* * * * * * * * * * * * * * * * * * * *

PETITION FOR A WRIT OF
CERTIORARI TO THE COURT
OF CRIMINAL APPEALS OF ALABAMA

* * * * * * * * * * * * * * * * * * * *

BRIEF OF PETITIONER

* * * * * * * * * * * * * * * * * * * *

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23 pp

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QUESTIONS PRESENTED

Was the guilty plea entered in the present case void because of a failure to substantially accord to the defendant many of his essential constitutional rights ?

TABLE OF CASES

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Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)	5
Burden v. State of Alabama, 584 F.2d 100 (1978)	6
Henderson v. Morgan, 426 U.S. 637, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976)	5
Stark v. State, 323 So.2d 735 (Ala.Cr.App. 1975)	7

TABLE OF CONSTITUTIONAL PROVISIONS

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Fourteenth Amendment	5

OPINIONS BELOW

The opinion of the Court of Criminal Appeals of Alabama affirming the Petitioner's conviction is not as yet reported but will be reported as follows:

Perkins v. State, _____ So. 2d _____ (Cr.App.Ala. 1985)

A copy of the same is submitted in Appendix "A" to this petition.

The order of the Alabama Supreme Court denying the Petitioner's writ of certiorari is not as yet reported as follows:

Ex Parte: Edward C. Perkins
In re: Perkins v. State,
_____ So.2d _____ (S.Ct.Ala, 1986)

A copy of the same is submitted in Appendix "B" to this petition.

JURISDICTION

The order of the Supreme Court of Alabama wherein the writ of certiorari was denied was issued on August 29, 1986, and this petition is within sixty days of that date.

The Jurisdiction of this Honorable Court is invoked under 28 United States Code, Section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional provisions involved in Petitioner's writ include the Fifth Amendment to the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States. A copy of these amendments are submitted as Appendix "C" to this petition.

STATEMENT OF THE CASE AND FACTS

The Petitioner entered a plea of guilty to the charge of theft of property second degree. He was sentenced to a term of four years in the State penitentiary. An appeal followed to the Alabama Court of Criminal Appeals.

The basis of the Petitioner's appeal was as follows: his due process rights under the Fifth and Fourteenth Amendments to the United States Constitution were violated when the guilty plea did not meet Constitutional standards in that the Petitioner was not fully and adequately informed of the elements of the offense charged.

On August 20, 1985, the Court of Criminal Appeals of Alabama affirmed the conviction of the Circuit Court, the

opinion of which is submitted as Appendix "A" . An application for rehearing was filed in the Court of Criminal Appeals raising the same issues and was denied without opinion on May 27, 1986.

Mr. Perkins then petitioned the Supreme Court of Alabama for a writ of certiorari alleging the same issues. The petition was denied, without opinion on August 29, 1986. See Appendix B.

ARGUMENT

Petitioner asserts to this Honorable Court that he was denied his due process rights under the Fifth and Fourteenth Amendments to the United States Constitution, when the trial judge failed to comply with the constitutional requirements involved in a valid plea of guilty.

The petitioner was charged with theft of property in the second degree and entered a plea of guilty to said charge. The petitioner also executed a guilty plea "form" that purported to set out the petitioner's constitutional rights as described in Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). However, Petitioner argues that the present case falls under the mandate of Henderson v. Morgan, 426 U.S. 637, 96 S.Ct. 2253, 49 L.Ed.2d 108 (1976).

In Henderson, supra, this Court held that where specific intent was an element of the crime charged and since it was not properly determined that the accused was either informed or made a factual statement implying that he had such intent, the plea failed to be constitutionally voluntary and was vacated. Likewise, the Fifth Circuit Court of Appeals held in Burden v. State of Alabama, 584 F.2d 100 (1978), that the due process clause of the Fourteenth Amendment requires that a guilty plea cannot be found voluntary if the defendant is not informed of the elements of the crime with which he is charged.

Also, Alabama law has held that a valid plea of guilty cannot rest solely upon a written form which has been

executed, but that perhaps such a plea could be bottomed upon a form plus a minute entry which incorporates the form and recites that the defendant has read the form and fully understands it. Starks v. State, 323 So.2d 735 (Ala.Cr.App. 1975).

The guilty plea form used in the present case is adequate, however, the colloquy between the judge and your petitioner affirmatively shows that the defendant did not understand fully what he was doing when he pled guilty to second degree theft. The Court asked the defendant to tell what he had "done" and the defendant responded by recounting a state of facts under which he committed a wrongful act but lacking the specific intent at the time to be

found guilty of felony theft. (R. 5 "I don't know why I went in the house but I did.") The Court even asked if he understood the defense of intoxixation, and after hearing the statement can there be any doubt that the accused was not apprised of the essential element of criminal intent and the fact that the State would have to prove it beyond a reasonable doubt as required by Henderson ? Long after the plea and at the time of sentencing the defendant still did not understand the required intent. (R. 9 "I went in. . . I was still high on drugs and I went in . . . I know (now) it was a terrible mistake")

The colloquy clearly shows that your Petitioner did not have the required knowledge of the elements of the crime he pled guilty to.

CONCLUSION

The Petitioner respectfully submits to this Court that the prevailing Federal and State law mandate that a defendant's Constitutional rights be safeguarded in guilty plea proceedings as well as in jury trials. A defendant must make a truly specific, intelligent and voluntary waiver of all his rights while being made fully aware of all aspects of the offense he is charged with. The facts show the possibility of a valid defense and that the accused never considered himself guilty of what he was charged with. A reversal is dictated and a new trial should be ordered.

Respectfully submitted,

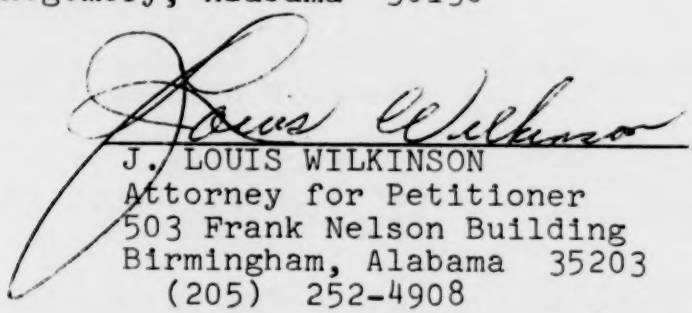
J. Louis Wilkinson
Attorney for Petitioner

Charles M. Purvis
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Writ of Certiorari has been mailed to the attorneys for the Respondent, certified mail, this the 28th October, 1986, and addressed as follows:

Honorable Charles A. Graddick
Attorney General
250 Administrative Building
Montgomery, Alabama 36130



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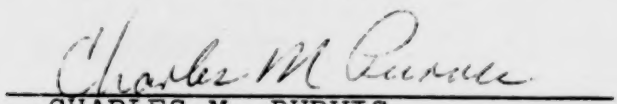

CHARLES M. PURVIS
Attorney for Petitioner
503 Frank Nelson Building
Birmingham, Alabama 35203
(205) 252-4908

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APPENDIX "A"

AUG 20 1985

THE STATE OF ALABAMA

JUDICIAL DEPARTMENT

THE ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 1984-5

8 Div 262

Edward C. Perkins

vs.

State

Appeal from Madison Circuit Court

TAYLOR,JUDGE

The appellant, Edward C. Perkins, was indicted on June 29, 1984, in a three count indictment charging him with burglary, third degree; theft of property, second degree; and receiving stolen property, second degree. The burglary and receiving stolen property counts were nol-prossed, and on October 22, 1984, the appellant Perkins entered a plea of guilty to the second degree theft of property count. At the guilty plea hearing, the trial judge ascertained from Mr. Perkins the following: that his appointed attorney had gone over the indictment with him; that the attorney had gone over " your constitutional rights with you"; that he understood each of his constitutional rights; that he understood that he had the right to insist on them; that in explaining to

to him his constitutional rights, his attorney used a document styled "request to enter guilty plea" (an "Ireland" form which is contained in the record); that he voluntarily signed the document; that is he insisted on any of his rights they would be enforced in his favor, and that he understood that he did not have to plead guilty if he did not wish to do so. The court also stated, " I want to emphasize Point 11 in this document. Has anyone threatened you or promised you any reward or inducement or that anything bad would happen to you if you did not plead guilty to this charge? " The defendant answered, "No, sir, no one has." The trial court advised the appellant of the minimum and maximum possible sentences and also that any recommendation of sentence would not be binding

upon the judge, to which the appellant stated he understood. The appellant then stated to the judge the facts supporting the charge of theft of property, during which the inference was raised of a defense of intoxication. The court immediately asked the appellant "Do you understand the defense of intoxication?" The appellant answered, "Yes, sir." The court then asked the appellant, "Have you gone over that with your lawyer?" The appellant answered, Yes, sir." The court then asked appellant's attorney if, based on his knowledge of that facts, it was his recommendation that the appellant plead guilty. Appellant's attorney replied in the affirmative. See Whorton v. State, 422 So.2d 812 (Ala.Cr.App. 1982). The appellant's plea

of guilty was then accepted by the court, and the State recommended 18 months' imprisonment and agreed to stand mute on the issue of probation. A sentencing hearing was then scheduled.

A sentencing hearing was held on December 6, 1984, at which probation was denied and the appellant was sentenced to four years' imprisonment. The following day, to-wit: December 7, 1984, the appellant filed a "Notice of Appeal and Request for Bond." At no time did the appellant file a motion to withdraw his guilty plea nor a motion for new trial. Therefore, because there is no adverse ruling at the trial court level. This Court so held in Johnson v. State, (Ms. 8 Div. 257, July 2, 1985) _____So. 2d ____ (Ala.Cr. App. 1985). Even is such a request had

been filed, thus preserving the issue for appeal, the issues raised by the appellant in his brief are without merit.

AFFIRMED.

ALL THE JUDGES CONCUR.

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
P. O. BOX 351
MONTGOMERY, 36101

WILLIAM M. BOWEN, JR.
Presiding Judge
JOHN C. TYSON, III
SAM TAYLOR
JOHN PATTERSON
H. WARD McMILLAN
Judges

MOLLIE JORDON
Clerk
Ph. 261-4590

8th Div. 262

MADISON CIRCUIT COURT
CC 84-771 FW

EDWARD C. PERKINS vs State of Alabama
Appellant Appellee

Dear Sir:

You are hereby notified that on May 27, 1986 the following indicated action was taken in the above styled cause by the Court of Criminal Appeals of Alabama:

_____ Notice of Appeal filed. Future correspondence should refer to the above number.

_____ Record on Appeal filed. Date of Certificate of Completion of Record on Appeal: As to briefs, see Rules 28,31 and 32, A.R.A.P.

_____ On motion, record of appeal accepted and considered as timely filed in this Court.

_____ Appellant granted seven (7) additional days to file brief, Brief due on _____.

_____ Appellee granted seven (7) additional days to file brief. Brief due on _____.

_____ Appellant granted seven (7) additional days to file reply brief. Brief due on _____.

_____ Brief of Appellant filed. _____ Oral argument requested by appellant.

_____ Oral argument request disallowed; appeal submitted on briefs.

_____ Appeal submitted to the Court for decision in the following manner:

_____ Appeal affirmed. No opinion. Judgment not final, see Rule 41, A.R.A.P.

_____ Appeal dismissed. No Opinion.

_____ Application for rehearing and Rule 39(k), A.R.A.P., motion filed.

_____ Application for rehearing filed.

XXX Application for rehearing overruled. No opinion. Judgment not final, see Rule 41, A.R.A.P.

_____ Application for rehearing returned for non-compliance with Rule 40, A.R.A.P.

_____ Appeal placed on rehearing ex mero motu.

_____ Certificate of Final Judgment issued to Circuit Clerk.

_____

/s/ Mollie Jordon
CLERK
COURT OF CRIMINAL APPEALS
OF ALABAMA

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
P. O. BOX 351
MONTGOMERY, 36101

September 12, 1986

WILLIAM M. BOWEN, JR.
Presiding Judge
JOHN C. TYSON, III
SAM TAYLOR
JOHN PATTERSON
H. WARD McMILLAN
Judges

MOLLIE JORDON
Clerk

Hon. J. Louis Wilkinson
Attorney at Law
503 Frank Nelson Building
Birmingham, Alabama 35203

Re: 8th Div. 262
Edward C. Perkins v. State
Madison Circuit Court
CC84-771-FW

Dear Sir:

The Court of Criminal Appeals has today granted a stay of sixty (60) days from August 29, 1986, to allow filing of a petition for writ of certiorari in the United States Supreme Court. This stay will remain in effect until action is taken on the petition, and if petition is granted, until a decision is rendered by the United States Supreme Court.

The certificate of final judgment has been recalled from the lower court pending determination by the United States Supreme Court, but the certificate will be reissued upon the expiration of the sixty-day stay unless this Court is notified by the United States Supreme Court of the filing of said petition in that Court.

Yours very truly,

/s/ Mollie Jordon

Clerk

cc: Clerk, Madison Circuit Court
Office of the Attorney General
File

APPENDIX "B"

THE STATE OF ALABAMA - JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

August 29, 1986

85-1039

EX PARTE: EDWARD C. PERKINS

PETITION FOR WRIT OF CERTIORARI

(Re: Edward C. Perkins v. State)

CCA 8/262

CERTIFICATE OF JUDGMENT
WRIT DENIED

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari be denied.

SHORES, J. - TORBERT, CJ., JONES, ADAMS & STEAGALL, JJ., CONCUR.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.
Witness my hand this 29 of Aug 19 86.

/s/ Robert G. Esdale

Clerk, Supreme Court of Alabama

APPENDIX "C"

a) United States Constitution - Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life, limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

b) United States Constitution - Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CERTIFICATE OF SERVICE

We, J. Louis Wilkinson and Charles M. Purvis, members of the Supreme Court of the United States and Attorneys for Edward Perkins, the Petitioner, do hereby certify that on this 28 day of October, 1986, we did serve the requisite number of copies of the foregoing on the Attorney General of the State of Alabama, Respondent, by mailing same to him, first class, postage prepaid and addressed as follows:

Honorable Charles Graddick
Office of the Attorney General
250 Administrative Building
Montgomery, Alabama 36130

J. LOUIS WILKINSON
Attorney for Petitioner

CHARLES M. PURVIS
Attorney for Petitioner

Wilkinson, Purvis & Vinson
503 Frank Nelson Building
Birmingham, Alabama 35203
(205) 252-4908